

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MAIK KAUFMAN,

Petitioner,

v.

TIMOTHY S. ROBBINS,

Respondent.

Case No. CV 10-4124-VBF (JEM)

MEMORANDUM AND ORDER  
DISMISSING MATTER AS MOOT

On February 19, 2010, Maik Kaufman ("Petitioner") filed in the District of New Mexico a Petition for Writ of Habeas Corpus by a Person in Federal Custody under 28 U.S.C. § 2241. On March 1, 2010, Petitioner filed a First Amended Petition ("FAP"), in which he contends that he is being unlawfully detained by Immigration and Customs Enforcement ("ICE"). (Petition at 1.) On June 3, 2010, the case was transferred to the Central District of California.

On September 15, 2010, Respondent filed a Notice Re: Release of Petitioner from Custody ("Notice"), stating that Petitioner was released from custody on September 14, 2010. (Notice at 1.) Respondent argues that Petitioner's release from custody renders the FAP moot and requests that the FAP be dismissed for lack of jurisdiction. (*Id.* at 2.) In support of his request for dismissal, Respondent submits a document entitled "Release Notification," which indicates that Petitioner was released from custody.

1 The case or controversy requirement of Article III of the Constitution deprives the  
 2 Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc'y v. Heckler, 464 U.S. 67, 70  
 3 (1983); NAACP, Western Region v. City of Richmond, 743 F.2d 1346, 1352 (9th Cir. 1984).  
 4 "In general, a case becomes moot "when the issues presented are no longer 'live' or the  
 5 parties lack a legally cognizable interest in the outcome."" Murphy v. Hunt, 455 U.S. 478,  
 6 481 (1984) (citations omitted). The Court does not have the power to decide a case that  
 7 does not affect the rights of litigants in the case before it. Lewis v. Continental Bank Corp.,  
 8 494 U.S. 472, 477 (1990); DeFunis v. Odegaard, 416 U.S. 312, 316 (1974); Mitchell v.  
 9 Dupnik, 75 F.3d 517, 528 (9th Cir. 1996). In other words, a petitioner must have suffered an  
 10 actual injury that is traceable to the respondent and can be redressed by a favorable judicial  
 11 decision. Spencer v. Kemna, 523 U.S. 1, 7 (1998); NAACP v. Western Region, 743 F.2d at  
 12 1353.

13 In his FAP, Petitioner requested release from detention.<sup>1</sup> (FAP at 1.) Because  
 14 Petitioner now has been released from detention, there is no further relief this Court can  
 15 provide. Picrin-Person v. Rison, 930 F.2d 773, 775-76 (9th Cir. 1991). Accordingly, this  
 16 case is moot.

17 The mootness rule is subject to an exception for matters that are "capable of  
 18 repetition, yet evading review." See Nebraska Press Assn. v. Stuart, 427 U.S. 539, 546  
 19 (1976); GTE California, Inc. v. Federal Communications Comm'n, 39 F.3d 940, 945 (9th Cir.  
 20 1994). The exception is met when: (1) the "duration of the challenged conduct is too brief  
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22 <sup>1</sup> In the FAP, Petitioner also indicates that he is challenging a deportation order. (FAP  
 23 at 1, Brief in Support of FAP at 4.) The District Court has no jurisdiction to consider such a  
 24 challenge. 8 U.S.C. § 1252(b)(9); see also lasu v. Smith, 511 F.3d 881, 884, 886-88 (9th Cir.  
 25 2007) (8 U.S.C. § 1252 (b)(9), as revised by the REAL ID Act of 2005, strips the district courts  
 26 of jurisdiction to review deportation orders). Rather, a challenge to Petitioner's final deportation  
 27 order lies within the exclusive jurisdiction of the Ninth Circuit. 8 U.S.C. § 1252 (a)(5) ("a petition  
 28 for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means  
 for judicial review of an order of removal . . ."); see also lasu, 511 F.3d at 886-87. Thus,  
 Plaintiff's only potentially viable claim in the FAP is his claim challenging his continued detention  
 in ICE custody pending execution of the deportation order.

1 ever to be fully litigated prior to its cessation;” and (2) there is a reasonable probability that  
2 the petitioner again will be subject to the challenged activity. Mitchell, 75 F.3d at 528; GTE  
3 California, 39 F.3d at 945.

4 Although Petitioner's confinement is capable of repetition, any future confinement  
5 would not be too brief to be fully litigated prior to its cessation because Plaintiff would be able  
6 to file another habeas petition concerning any future alleged violation of his liberty interest.  
7 Moreover, the Court cannot now determine if any future confinement of Petitioner would  
8 violate his constitutional rights because such future confinement necessarily would be based  
9 on new events that have not yet occurred. Any fear that ICE may take action against  
10 Petitioner in the future does not create a case or controversy because such a case is not ripe  
11 for adjudication. See Associated Gen. Contractors v. Coalition for Econ. Equity, 950 F.2d  
12 1401, 1406-07 (9th Cir. 1991).

13 **ORDER**

14 Accordingly, IT IS HEREBY ORDERED that the First Amended Petition be dismissed  
15 as moot.

16 IT IS SO ORDERED.

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18 DATED: September 20, 2010

  
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VALERIE BAKER FAIRBANK  
UNITED STATES DISTRICT JUDGE

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21 Presented by:

22 /s/ John E. McDermott  
23 John E. McDermott  
24 United States Magistrate Judge  
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